

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT CARDIOVASCULAR)	
SYSTEMS INC. and ABBOTT)	
LABORATORIES INC.,	)	C. A. No. 98-80 (SLR)
	)	(Consolidated with C.A. No. 98-314
Plaintiffs,	)	(SLR) and C.A. No. 98-316 (SLR))
)	
v.	)	REDACTED
	)	PUBLIC VERSION
MEDTRONIC VASCULAR, INC. and)	
MEDTRONIC USA, INC.,	)	JULY 9, 2007
)	
Defendants.)	
)	

**ACS'S OPENING BRIEF IN SUPPORT OF ITS
MOTION FOR PERMANENT INJUNCTION**

Frederick L. Cottrell, III (#2555)
cottrell@rlf.com
Anne Shea Gaza (#4093)
gaza@rlf.com
RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(302) 651-7509
*Attorneys for Plaintiffs Abbott Cardiovascular
Systems Inc. and Abbott Laboratories Inc.*

OF COUNSEL:
J. Michael Jakes
Gerald F. Ivey
Michael A. Morin
FINNEGAN, HENDERSON, FARABOW
GARRETT & DUNNER, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001-4413
(202) 408-4000
(202) 408-4400

June 29, 2007

REDACTED

Additionally, ACS's loss of market share damaged the goodwill of ACS's business in the eyes of investors. (Ex. 6, Pacitti Decl. at ¶ 10.) When valuing a medical device company such as ACS, investors place substantial emphasis on the company's share in the market. (*Id.*; Ex. 21.) By usurping ACS's market share, Medtronic diminished the goodwill—and thus value—of ACS's business to current and potential investors. (*Id.*)

C. The Court Rules That Medtronic Infringed ACS's Patents

In February 2005, a jury found that all of Medtronic's accused stents infringe the asserted claims of ACS's patents, and that none of the asserted claims is invalid. (D.I. 629.) Yet, in the two and a half years that followed, Medtronic has not stopped infringing. Even now that the Court denied Medtronic's post-trial motions (D.I. 712), upheld the enforceability of the patents (D.I. 713), and entered judgment in ACS's favor (D.I. 715, 719), Medtronic continues to infringe, advertising its infringing Driver and Micro-Driver products for sale on its web page. See http://www.medtronic.com/physician/vascular/cs_home.html. Medtronic shows no signs of stopping either. Absent an injunction, Medtronic's infringement will continue and, in fact, multiply, as explained below.

D. ACS Settles Patent Litigation with Cordis and Boston Scientific Involving Their Connected-Ring Stents and Competing Patent Claims

ACS has *never* licensed its Lau patents to a third party for money alone. Rather, the few licenses ACS granted were purely in the context of settlements and cross-licenses. (Ex. 8,

REDACTED

Schneiderman Decl. at ¶ 5.) Specifically, after Medtronic began infringing ACS's Lau patents, other competitors, including Cordis and Boston Scientific, followed suit. As it did here, ACS initiated litigation against both parties, suing Cordis in the Northern District of California and Boston Scientific in the Southern District of Indiana. (*Id.* at ¶¶ 2-3.) At that time, Cordis and Boston Scientific also had asserted patent claims against ACS's Multi-Link stents, requesting injunctive relief and monetary damages. All of these disputes, however, were ultimately resolved by settlements and cross-license agreements that ended multiple lawsuits both by and against ACS. (*Id.*⁵) As part of these settlements, ACS licensed its Lau patents to Cordis and Boston Scientific, but *only* in exchange for licenses on their competing patents. (*Id.*; Ex. 10; Ex. 11; Ex. 12.)

ACS has a general policy against licensing its Lau patents simply for money and has no interest in licensing them to Medtronic or anyone else on that basis. (*Id.* at ¶ 6.) It should not be forced to do so now, against its will.

E. Medtronic's Plans to Multiply Its Infringement by Releasing an Infringing Driver Stent with a Drug Coating

1. Drug-Eluting Stents Change the Landscape of the Stent Market

In 2003, the U.S. stent market was dramatically changed by the launch of DES products. The first such product was Cordis's "Cypher" stent, which includes a stent coated with a drug that is designed to be released when the stent is implanted in a vessel. (Ex. 13.) The Cypher stent is on the market under a license to ACS's Lau patents. In 2004, Boston Scientific released the second competing DES product ("Taxus"). (Ex. 14.) As with the Cypher, the Taxus is also on the market under a license to ACS's Lau patents.

⁵ References to "Schneiderman Decl." refer to the Declaration of Gary Schneiderman, Ph.D, attached as Ex. 8.

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEDTRONIC VASCULAR, INC. and)	
MEDTRONIC USA, INC,)	
)	
Plaintiffs,)	
)	
v.	)	Civ. No. 98-80-SLR
)	
ADVANCED CARDIOVASCULAR)	
SYSTEMS, INC. and GUIDANT)	
SALES CORP.,)	
)	
Defendants.)	

O R D E R

At Wilmington, this 5th day of January, 2005;

IT IS ORDERED that:

1. ACS's motion in limine to exclude Medtronic's June 12, 2001 summary of the interview with Examiners Willse and Jackson (D.I. 506) is granted.
2. ACS's motion in limine to preclude the testimony of Medtronic's patent law expert, Don W. Martens, that is inconsistent with the court's guidelines for patent cases (D.I. 507) is granted.
3. ACS's motion in limine to preclude Medtronic from introducing argument or evidence relating to its claim that ACS misappropriated trade secrets in the trial for the Boneau patent claim (D.I. 508) is granted.

4. ACS's motion in limine to exclude testimony of Steven Opolski (D.I. 509) is granted.

5. ACS's motion in limine to exclude irrelevant evidence concerning governmental investigations of FDA recalls (D.I. 510) is granted.

6. Medtronic's motion in limine to preclude ACS from making reference to its license agreements with Cordis and Boston Scientific Company (D.I. 514) is granted. Regardless of the reason, absent full discovery of a matter, the matter shall not be admitted as evidence.



United States District Judge

Exhibit 3

REDACTED

Exhibit 4



901 New York Avenue, NW ■ Washington, DC 20001-4413 ■ 202.408.4000 ■ Fax 202.408.4400
www.finnegan.com

ANDREW J. VANCE
202.408.4197
andrew.vance@finnegan.com

August 30, 2007

Matthew A. Hoffman, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071-3197

VIA EMAIL

Re: Advanced Cardiovascular Systems, Inc. v. Medtronic Vascular, Inc.
C.A. No. 98-80-SLR (consolidated)

Dear Matthew:

We write in response to Medtronic's subpoena of Dr. Joel Kahn, its deposition notices for Dr. Gary Schneiderman and David C. Pacitti, and its 30(b)(6) deposition notice for Abbott.

We will be representing Dr. Kahn in connection with Medtronic's subpoena. Due to his busy medical practice, Dr. Kahn is unavailable for deposition on September 14, 2007. However, Dr. Kahn would be available for deposition on Saturday, September 15, 2007, at the location specified in Medtronic's subpoena. Please let us know whether Medtronic would like to depose Dr. Kahn on that date.

Dr. Schneiderman is available for deposition on September 26, 2007, in our Palo Alto offices. At his deposition, Dr. Schneiderman will be prepared to address certain topics in Medtronic's 30(b)(6) notice. Please let us know whether Medtronic would like to depose Dr. Schneiderman on September 26 in our Palo Alto offices.

Unfortunately, Mr. Pacitti is unavailable for deposition due to a serious medical condition that has caused him to take extended medical leave from his employment with Abbott. As a substitute witness, Abbott will agree to make Adria Spano available for deposition on September 28, 2007, in our Palo Alto offices. Ms. Spano will be prepared to address the topics in paragraphs 2-10 of Mr. Pacitti's declaration (i.e., all non-DES related topics). Ms. Spano also will be prepared to address certain topics in Medtronic's 30(b)(6) notice. Please let us know whether Medtronic would like to depose Ms. Spano on September 28 in our Palo Alto offices.

With respect to the topics listed in Medtronic's 30(b)(6) notice, Abbott plans to designate Dr. Schneiderman and Ms. Spano as witnesses on its behalf. Abbott will provide a formal response to Medtronic's 30(b)(6) notice, including a designation of particular topics that will be addressed by Dr. Schneiderman and Ms. Spano, by September 11, 2007, as requested by the notice.

Matthew A. Hoffman, Esq.
August 30, 2007
Page 2

FINNEGAN
HENDERSON
FARABOW
GARRETT &
DUNNER LLP

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew J. Vance". The signature is fluid and cursive, with the first name "Andrew" and last name "Vance" clearly distinguishable.

Andrew J. Vance

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT CARDIOVASCULAR)	
SYSTEMS INC. and ABBOTT)	
LABORATORIES INC.,)	
)	
Plaintiffs,	)	C.A. No. 98-80 (SLR)
	)	(Consolidated with
v.	)	C.A. No. 98-314 (SLR) and
	)	C.A. No. 98-316 (SLR))
)	
MEDTRONIC VASCULAR, INC. and)	
MEDTRONIC USA, INC.,)	
)	
Defendants.)	

**DEFENDANTS' NOTICE OF DEPOSITION PURSUANT
TO FED. R. CIV. P. 30(b)(1) FOR ADRIA SPANO**

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 30(b)(1), defendants Medtronic Vascular, Inc. and Medtronic USA, Inc. (collectively "Medtronic") will take the deposition, upon oral examination, of Adria Spano before a Notary Public or other officer authorized by law to administer an oath. The deposition will take place at the offices of Gibson, Dunn & Crutcher LLP, 1881 Page Mill Road, Palo Alto, CA on September 28, 2007 at 9:30 a.m. The deposition will continue from day to day until concluded. The deposition will be recorded stenographically and may be videotaped.

Medtronic further requests that the deponent produce the documents requested in Exhibit A hereto on or before September 13, 2007. The attached requests are subtopics of Medtronic's First Requests for Production of Documents and Things regarding the *eBay* factors. Nonetheless, Medtronic propounds these specific requests so that responsive documents are produced and segregated in a manner whereby the documents in the witness' possession can be readily identified.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Karen Jacobs Loudon

Karen Jacobs Loudon (#2881)

1201 N. Market Street

P.O. Box 1347

Wilmington, DE 19899-1347

(302) 658-9200

Attorneys for Defendants Medtronic Vascular, Inc.
and Medtronic USA, Inc.

OF COUNSEL:

Kevin S. Rosen

Matthew A. Hoffman

Anthony S. Newman

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PITTMAN LLP

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McLean, Virginia 22102

(703) 770-7900

September 11, 2007

1231172

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on September 11, 2007 I electronically filed the foregoing with the Clerk of the Court using CM/ECF which will send notification of such filing to:

Frederick L. Cottrell, III
Anne Shea Gaza
Richard Layton & Finger

I further certify that on September 11, 2007 I served copies of the foregoing to the following counsel in the manner indicated:

BY HAND & EMAIL

Frederick L. Cottrell, III
Anne Shea Gaza
Richards Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899

BY EMAIL

J. Michael Jakes
Michael A. Morin
Finnegan Henderson Farabow Garrett & Dunner LLP
901 New York Avenue, NW
Washington, DC 20001-4413

/s/ Karen Jacobs Loudon

Karen Jacobs Loudon

EXHIBIT A

DOCUMENTS AND THINGS TO BE PRODUCED BY ADRIA SPANO

REQUEST NO. 1:

All documents, things, reports, books, or other material provided to you in this action or upon which you rely as the basis for your opinions and conclusions in your Declaration, including but without limitation, all such documents which you, or others at your direction, have generated.

REQUEST NO. 2:

A current resume.

REQUEST NO. 3:

Any and all reports, writings, analyses and/or statements prepared by you in connection with your activities as a witness or declarant herein, and all drafts or earlier versions thereof.

REQUEST NO. 4:

All correspondence, including but without limitation, correspondence by electronic mail, between you and Plaintiffs' attorneys or other agents in connection with this action.

REQUEST NO. 5:

All notes or memoranda made by you in connection with your activities as a witness or declarant, or in connection with any assignment to form any opinions herein, including but without limitation, all notes of conversations with Plaintiffs' attorneys or other agents in connection with this action.

REQUEST NO. 6:

Any and all speeches, presentations, and/or articles you have authored or prepared, including but without limitation, those you have relied on and/or that relate to the subject matter of your Declaration filed in this action.

REQUEST NO. 7:

All documents relating to any testimony you have given, whether by deposition, trial or otherwise, in any proceeding at any time, including a transcript of any such testimony.

REQUEST NO. 8:

All documents provided to you by Plaintiffs' attorneys or other agents in connection with this action.

REQUEST NO. 9:

All instructional materials you prepared and/or utilized in connection with any courses and/or seminars you have taught, and/or lectures you have given, relating to the subject matters of your Declaration filed in this action.

REQUEST NO. 10:

All notes or outlines you prepared and/or utilized in connection with your teaching, lecturing, advising, counseling, or commenting on subject matters relating to your Declaration filed in this action.

REQUEST NO. 12:

All documents and things you considered or reviewed in the preparation of your Declaration in this action.

REQUEST NO. 13:

All documents and things relating to Plaintiffs' market share of bare-metal Stents from September 1997 to the present.

REQUEST NO. 14:

All projections, forecasts and/or analyses relating to Plaintiffs' future sales, profits and market share of bare-metal Stents and drug-eluting Stents, both separately and combined.

REQUEST NO. 15:

All internal analyses from the past four years, as well as all underlying data and reports related thereto, of the Stent market, including for bare metal Stents and drug eluting Stents, both separately and combined.

REQUEST NO. 16:

All documents relating to Plaintiffs' policies and practices relating to the reinvestment of profits into research and development, including but not limited to the reinvestment of profits gained through sales of its bare-metal Stents into research and development of future Stent products.

REQUEST NO. 17:

All documents and things relating to Plaintiffs' ability to recruit and retain employees for its Stent business from 1997 to the present.

REQUEST NO. 18:

All documents relating to the recruitment of Plaintiffs' employees by Medtronic since 1997.

REQUEST NO. 19:

All documents relating to the recruitment of Medtronic's employees by Plaintiffs since 1997.

REQUEST NO. 20:

All documents relating to any damage to ACS's reputation due to sales of Medtronic's Adjudicated Stents, including but not limited to any goodwill loss by ACS in the eyes of investors.

REQUEST NO. 21:

All documents relating to ACS's lost "value" due to sales of Medtronic's Adjudicated Stents, including but not limited to any documents relating to the effect of sales of Medtronic's Adjudicated Stents on ACS's stock price.

REQUEST NO. 22:

All documents relating to ACS's lost "opportunity" due to sales of Medtronic's

Adjudicated Stents.

REQUEST NO. 23:

All documents relating to the interchangeability or lack thereof of Medtronic's Stents and any other Stents on the market.

REQUEST NO. 24:

All documents and things relating to Plaintiffs' ability to manufacture, sell and distribute an adequate amount of bare metal Stents to meet the current and future market demand for bare metal Stents, including but not limited to documents relating to the size of Plaintiffs' sales force, the experience and training of the sales force relating to Stents, and the ability of Plaintiffs' sales representatives to meet the bare metal Stent needs of physicians.

Exhibit 6

Newman, Anthony S.

From: Gaza, Anne [gaza@RLF.com]
Sent: Thursday, September 20, 2007 7:45 AM
To: Slr_Civil@ded.uscourts.gov
Cc: Vance, Andrew; Loudon, Karen Jacobs; Cottrell, Frederick; Rosen, Kevin S.; Hoffman, Matthew A.; Newman, Anthony S.; Ghavimi, Darlene
Subject: RE: Abbott Cardiovascular Systems, Inc. v. Medtronic Vascular, Inc., C.A. No. 98-80 (SLR)
Attachments: EMail_RESP1.pdf

Dear Judge Robinson,

Attached please find ACS's response to Medtronic's request for emergency relief.

*Respectfully,
Anne Shea Gaza
(#4093)*

Anne Shea Gaza, Esquire
RICHARDS, LAYTON & FINGER
Phone: (302) 651-7539
gaza@rlf.com

Richards, Layton and Finger, P.A. is not providing any advice with respect to any federal tax issue in connection with this matter.

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From: Loudon, Karen Jacobs [mailto:KLoudon@MNAT.com]
Sent: Wednesday, September 19, 2007 5:01 PM
To: Slr_Civil@ded.uscourts.gov
Cc: Vance, Andrew; Cottrell, Frederick; Gaza, Anne; Rosen, Kevin S.; Hoffman, Matthew A.; Newman, Anthony S.; Ghavimi, Darlene
Subject: Abbott Cardiovascular Systems, Inc. v. Medtronic Vascular, Inc., C.A. No. 98-80 (SLR)

<<Email Request for Emergency Relief.pdf>>

Dear Judge Robinson,

Attached is Medtronic's request for emergency relief.

Respectfully,

Karen Jacobs Louden

Karen Jacobs Louden ☎ 302.351.9227 ✉ klouden@mnat.com

Morris, Nichols, Arsht & Tunnell LLP | 1201 North Market Street | Wilmington, DE 19801

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Opposing Counsel's Response to E-Mail Request for Emergency Relief

1. Case Number: -cv--SLR

2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

ACS opposes Medtronic's request. (1) While Abbott does not object to production of agreements with BSC and Cordis, Abbott cannot produce them due to confidentiality provisions. (2) ACS has not "refused" to make David Pacitti available for deposition. Mr. Pacitti has a serious medical condition that has placed him on extended medical leave from Abbott. In his place, ACS has offered to make available another witness to testify on the subject matter of his declaration. Because Medtronic will suffer no prejudice, there is no basis to strike Mr. Pacitti's declaration. (3) ACS should not be required to identify documents produced during pretrial discovery because it would be just as easy (and more efficient) for Medtronic to search these documents itself. (4) ACS objects to production of communications with Dr. Kahn based on the parties' agreement that documents concerning draft expert documents are not discoverable.

*Any text added to beyond the limits of this space will be disregarded by the court.

3. Name of local counsel submitting this response:

4. Today's Date:

Exhibit 7

Hoffman, Matthew A.

From: Vance, Andrew [andrew.vance@finnegan.com]
Sent: Thursday, September 20, 2007 2:54 PM
To: Hoffman, Matthew A.
Cc: Gaza, Anne; EXT Cottrell, Fred
Subject: Abbott v. Medtronic

Dear Matt:

We just learned that Adria Spano has left Abbott and thus will no longer be available for deposition next week. As a result, despite his serious health problems, Dave Pacitti has agreed to make himself available for deposition. Accordingly, this moots your request to strike Mr. Pacitti's declaration. We will be in touch shortly to provide a date and location for Mr. Pacitti's deposition.

Andrew

Andrew J. Vance | Finnegan, Henderson, Farabow, Garrett & Dunner, LLP | 901 New York Avenue, NW, Washington, DC 20001-4413
| 202.408.4197 | fax 202.408.4400 | andrew.vance@finnegan.com

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